IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6208 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHREE PRAMUKH INDUSTRIES PVT. LTD.

Versus

GUJARAT STATE FINANCIAL CORP. LTD.

Appearance:

MR BM MANGUKIYA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2002

ORAL JUDGEMENT

1 Rule. Mr.H.S.Munshaw appears and waives service of Rule. By consent of the parties, the matter is taken up for final hearing.

2 It appears that the petitioner company obtained certain lands from respondent no.1. As the petitioner was unable to make payments which were due in installments the respondent corporation issued notice some time in September,2000. Thereafter, the petitioner made some payments, but ultimately, once again on 11.10.2000, the petitioner was issued notice wherein it was stated that as the petitioner had defaulted and committed breach of the terms of the contract it was open to the respondent corporation to take appropriate action under Section 29 of the State Financial Corporation Act,1951. Subsequently after some time notices came to be issued on 17.11.2000 and 8.3.2001. In the meantime the petitioner Company ran into financial difficulties and as on 31/1/2001 the Company became sick in light of provisions of the Sick Industrial Companies (Special Provisions) Act,1985. The petitioner Company accordingly made a reference to the Board of Industrial and Financial Reconstruction (BIFR) which came to be registered on 30/4/2001 as case No.183/01. This fact was intimated by communication dated 16/5/2001 to the petitioner Company. Accordingly, on 31/5/2001, the petitioner conveyed to the respondent Corporation the fact about the petitioner Company having been registered with the Board. However, on 2/6/2001, the respondent Corporation took possession of the properties of the petitioner Company by stating that it had not received any intimation till that date to the effect that the case of the petitioner was registered with the Board.

3 During the course of hearing the attention of the Court was invited to the fact that the respondent Corporation was not aware about the case having been registered with the BIFR till the date it took possession. In support of this contention reliance has been placed on the affidavit-in-reply wherein it is stated at page no.66 as under :

> "It is stated that so far the respondents have not received any intimation from B.I.F.R. about the filing or registration of any proceedings by the present petitioner."

4 It is apparent that though the respondent corporation was aware of the case having been registered it chose to take action on 2/6/2001 on the plea that it had not received an intimation from the Board. In the entire affidavit-in-reply, the respondent Corporation does not deny that it had received intimation on 31/5/2001 from the petitioner. The action of the respondent Corporation, to say the least, is an attempt

to overreach the process of law. As can be seen from the annexures to the affidavit-in-reply, the last notice was dated 8/3/2001 and the said notice states that it should be treated as a final notice under Section 29 of the State Financial Corporations Act before take over. Till 2/6/2001, the respondent Corporation did not take any further action in pursuance of the aforesaid notice dated 8/3/2001, but, the moment it was intimated on 31/5/2001 that the petitioner's case has been registered with the Board it acted promptly to take possession on the facile plea that it had received no intimation from the Board.

5 Taking into consideration the facts that have come on record and the well settled position in law this petition is required to be allowed. The respondent Corporation is directed to hand over the possession of the Unit of the petitioner Company situated at Kerala in G.I.D.C. estate, Taluka Bavla, District Ahmedabad within a period of ten days from today. In case the respondent would like to approach the Board and seek its permission to retain the possession it would be open to the respondent Corporation to do so after handing over the possession.The petition stands allowed accordingly. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

m.m.bhatt